IN THE

Supreme Court of the United States

OCTOBER TERM, 1945—No.

In the Matter

of

CHILDS COMPANY, Debtor,

In proceedings for Reorganization under Chapter X of the Bankruptcy Act—No. 82868

BURTON C. MEIGHAN, JR., as Substituted Trustee under the Last Will and Testament of William T. Wood, Deceased,

Petitioner,

against

JOHN F. X. FINN, as Trustee of CHILDS COMPANY,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The opinions below and the statement of the case are believed sufficiently set forth in the foregoing petition.

Grounds of Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. Sec. 347) and Section 24 (c) of the Bankruptcy Act.

Specification of Errors

The Petitioner will urge that the Circuit Court of Appeals for the Second Circuit erred:

(1) In holding that the "Emergency Rent Control Law" does affect bankruptcy proceedings.

(2) In holding that, regardless of the fact that the "Emergency Rent Control Law" does interfere, fundamentally and vitally, with the relation of landlord and tenant and does suspend the vested federally-created rights of petitioner as fixed and determined by the final judgment of the District Court, the Emergency Rent Control Law is not repugnant to the constitutional provisions making Federal law the supreme law as to bankruptcy matters.

(3) In failing to reverse the order of the District Court decreeing that the time within which the debtor and its trustee be directed to surrender possession of premises 1553 Broadway, New York City, to petitioner be extended to July 1, 1946 upon payment of the emergency basic rent as prescribed in the Emergency Rent Control Law.

Summary of Argument

The points of argument will follow the reasons relied upon for the writ of certiorari and will be discussed in the order stated in the petition.

ARGUMENT

I

The decision of the Circuit Court of Appeals for the Second Circuit constitutes a dangerous precedent which would seriously impede the administration of corporate reorganizations under Chapter X of the Bankruptcy Act and thwart the very purpose of the statute in many instances.

Chapter X of the Bankruptcy Act was enacted by Congress to provide a more satisfactory method for the reorganization of corporations involved in temporary

financial straits. Its purpose was to permit the business of such corporations to continue and to preserve their assets for creditors and stockholders rather than have such assets dissipated by proceedings in bankruptcy or by equity receiverships. Corporate contracts, leases and subleases constitute assets which are or may be vital to the continuation of the business of the corporation.

The debtor, Childs Company, while tenant of petitioner of the entire building at 1553 Broadway was itself, landlord under subleases of the second and third floors. As an incident to the reorganization of the Childs Company the Trustee could be under a necessity to cancel and terminate one or both of the subleases. Just how dangerous as a precedent the decision of the Circuit Court of Appeals is can readily be seen from the following illustration: Assume that the Trustee of the debtor had proceeded to cancel one of the subleases and that the necessary steps under the Bankruptcy statute had been taken by the Trustee in that connection. Assume further that following the cancellation of the sublease the corporate trustee had been stayed, pending various appeals by the subtenant, from enforcing the District Court order removing the subtenant. Let us further assume, as in this case, that following the passage of the Emergency Rent Control Law the subtenant now refuses to vacate and in defense of such stand invokes the provisions of the said statute.

The decision of the Circuit Court of Appeals of the Second Circuit, if applied, would prevent the corporate trustee from realizing upon a substantial asset of the debtor, would frustrate the corporate trustee in managing and administering the debtor's asset and would seriously impede the very purpose of a corporate reorganization. The decision below clearly refutes the fundamental principle that federal law is the supreme law with respect to bankruptcies. *Gross* v. *Irving Trust Co.*, 289 U. S. 342, 344, and cases cited; *U. S. Fidelity Co.* v. *Bray*, 225 U. S.

205, 217. It may be that the principle is about to be modified or possibly questioned. If such is the case it involves a question of paramount importance in the administration of corporate reorganizations which has never been passed upon by this Court.

II

The decision by the Circuit Court of Appeals for the Second Circuit violates fundamental principles with respect to the exclusive and controlling jurisdiction of the Federal Courts regarding federally-created rights in connection with the administration of corporate reorganizations under Chapter X of the Bankruptcy Act.

This Court in *International Shoe Co.* v. *Pinkus,* 278 U. S. 261, 263, stated that the power of Congress is paramount and a State is, therefore, without power to make or enforce any law governing bankruptcies that impairs the obligation of contracts or extends to persons or property outside its jurisdiction or conflicts with the National Bankruptcy Laws. It is also true that much of the administration of a bankrupt's estate depends upon the interpretation of local law. Under the rule of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, a federal court in a diversity case applies local substantive law. But in cases where the issue concerns itself with the liquidation of a bankrupt's estate this Court has applied federal law. *Prudence Corp.* v. *Geist,* 316 U. S. 89. Whenever a federal right is involved it is governed by federal law. *Prudence Corp.* v. *Ferris,* 323 U. S. 650, 656, 657 and cases cited (concurring opinion by Mr. Chief Justice Stone).

The Bankruptcy Court has exclusive jurisdiction and that Court's possession and control of the estate cannot be affected by proceedings in other Courts, State or Federal. *Isaacs* v. *Hobbs Tie Co.,* 288 U. S. 732, 734, 737.

A Court of Bankruptcy itself is powerless to surrender the administration of the estate. Id. 739.

The District Court below exercised its exclusive jurisdiction on September 27, 1944 when it adjudicated that the lease and all rights thereunder had terminated and awarded possession to petitioner. Such adjudication was a final and absolute judgment and as a result petitioner acquired vested federally-created rights which were beyond the reach of the Legislature of the State of New York. *Hodges* v. *Snyder,* 261 U. S. 600, 603; *McCullough* v. *Virginia,* 172 U. S. 102, 123-124.

Petitioner's rights under the final judgment of the District Court, sitting as a Court of bankruptcy, were federally-created rights. This is so regardless of the fact that the federal court applied local substantive law governing the interpretation of the word "insolvent" in the "forfeiture clause" in the lease. *Meighan* v. *Finn,* 146 F. (2) 594 and cases cited. This Court was required only a month ago to speak out concerning federally-created rights and their enforcement. *Holmberg* v. *Armbrecht,* Case #505, October Term 1945 decided February 25, 1946. The situation here is clearly within the words of Mr. Justice Frankfurter:

> "We do not have the duty of a federal court, sitting as it were as a court of a state, to approximate as closely as may be state law in order to vindicate without discrimination a right derived solely from a state. We have the duty of federal courts, sitting as national courts throughout the country, to apply their own principles in enforcing an equitable right created by Congress. *When Congress leaves to the federal courts the formulation of remedial details, it can hardly expect them to break with historic principles of equity in the enforcement of federally-created equitable rights.*" (Italics supplied.)

The present case is not governed by the decision of this Court in *Guaranty Trust Co.* v. *York,* 326 U. S. 99. The

Emergency Rent Control Law for the period of the emergency is a significant part of the rules which determine the outcome of a litigation. But as such it is only significant in enforcing a state-created right. The *York* case is limited to State-created rights and has no application to federally-created rights such as here. As was pointedly said by Mr. Justice Frankfurter in the *Holmberg* case:

> "In *Guaranty Trust Co.* v. *York* (*supra*) we ruled that when a state statute bars recovery of a suit in a state court on a state-created right, it likewise bars recovery of such a suit on the equity side of a federal court brought there merely because it was 'between citizens of different states' under Article III, section 2, of the constitution. The amenability of such a federal suit to a state statute of limitation cannot be regarded as a problem in terminology, whereby the practical effect of a statute of limitation would turn on the content which abstract analysis may attribute to 'substance' and 'procedure.' We held, on the contrary, that a statute of limitation is a significant part of the legal rules which determine the outcome of a litigation. As such it is as significant in enforcing a state-created right by an exclusively equitable remedy as it is in an action at law. *But in the York case we pointed out with almost wearisome reiteration, in reaching this result, that we were there concerned solely with state-created rights.* For purposes of *diversity suits* a federal court is, in effect, 'only another court of the state' (*Guaranty Trust Co.* v. *York, supra,* at 108). *The considerations that urge adjudication by the same law in all courts within a state when enforcing a right created by that state are hardly relevant for determining the rules which bar enforcement of an equitable right created not by a state legislature, but by Congress.*" (Italics supplied.)

It is immaterial that the federally-created right granted petitioner in this case is by way of a final judgment of the District Court, sitting as a court of bankruptcy, and

not by direct Congressional Act or the Federal constitution. The bankruptcy court, including its jurisdiction, is the product of Congressional enactment—likewise the rights conferred by the bankruptcy court in the proper exercise of its jurisdiction. *International Shoe* v. *Pinkus, supra; South Beardstown Drainage & Levy District,* 125 F. (2) 13, 15; *Continental Bank* v. *Rock Island Ry.,* 294 U. S. 648.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be granted.

Dated: April 1, 1946.

BURTON C. MEIGHAN, JR.,
Counsel for Petitioner.

LOUIS A. MARCHISIO,
of Counsel.